

LABOUR DEPARMENT

The 7th/8th July. 1987

No. 9/3/87-Lab./3387.—In pursuance of the provision of section 17 of the Industrial Diputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispsute between the workman and the management of M/s (i) The Nuh Central Co-operative Consumers Store Ltd., Nuh, (ii) The Haryana State Federation of Consumers Coop. wholesale Stores Ltd., Chandigarh.

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 254 of 1983

between

SHRI RAM CHANDER, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S THE
NUH CENTRAL COOP. CONSUMERS STORE LTD., NUH (ii) THE HARYANA STATE
FEDERATION OF CONSUMERS COOP., WHOLESALE STORES LTD., CHANDIGARH.

Presents—

Shri S. S. Gupta, for the workman.

Shri M. P. Gupta, for the respondent-management.

AWARD

This reference under section 10(1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—*vide* its endorsement No. ID/FD/GGN/88-83/45730—35, dated 6th September, 1983 to adjudicate upon the dispute of service matter covered by second Schedule under section 7 of the said Act, arisen between Shri Ram Chander, Workman and the respondent management of M/s. The Nuh Central Coop Consumers Store, Ltd., Nuh ; (ii) The Haryana State Federation of Consumers Coop. Wholesale Stores Ltd., Chandigarh. Accordingly, it has registered as reference No. 254 of 1983.

2. Ram Chander remained posted as Salesman in Central Cooperative Store, Nuh from January, 1980 to July, 1980 and he had started remaining absent w.e.f. 14th July, 1980. Notice dated 6th August, 1980 Ex. M-2 was issued to him to return on duty and he had not turned up and he was placed under suspensaion on 30th August, 1980. Two reports dated 18th August, 1980 and 20th January, 1981 were submitted against him, alleging that he had mis-appropriated the amount of Rs. 84.53.499 P. of the said Store during the said period. It was also alleged that he had destroyed account record and had not maintained the stock register etc. He was again reminaded,—*vide* Ex. M-3, dated 12th September, 1980 to resume the duty but without any effect. Ultimately chargesheet Ex. M-A dated 12th July, 1982 was framed against him and despatched for submitting his explanation but no reply was received from him. He was reminded on 5th October, 1982 to reply the same but without any effect. Having no wayout his services were terminated on 31st January 1983,—*vide* Ex. M-1 and hence cause of action had arisen.

3. His claim has been to the effect that he was employed by the respondent as a Salesman in 1975 and he was chargesheeted and he had submitte his explanation and then his services were terminated. The allegations are that the said order is quite illegal, un-justified and against the principles of natural justice since no opportunity was granted to him to defend him. Request was made to reinstate him into his job with continuity of service and with full back wages.

4. On notice respondent contested the case and filed Written Statement. It has been contended that he was purely a temporary employec and as such his services could be terminated without assigning any reason or giving any notice. Further objection is that he had not filed any appeal against the order of termination and without exhausting an available remedy his service matter cannot be referred to the Labour Court. The plea taken is that he had not submitted his explanation of chargesheet framed against him despite of reminders and ultimately his services had to be terminated. By way of replication Ram Chander has repeated his claim as well as allegations also. On the pleadings of the parties, my learned predecessor had framed the following issue on 13th August, 1984:—

(i) As per reference ?

5. From the side of respondent its accountant has appeared. On the other hand, there is statement of Ram Chander also. I have heard the parties as represented above. My findings on the said issue is as below :—

Issue No. I :

6. It appears to be a bad case for Ram Chander. It has been contended on his behalf that no enquiry into the matter has ever been held and order of termination is void *ab inito*. It has been replied on behalf of the respondent that he was reminded,— *vide* Ex. M-2 and M-3 to report on duty and further chargesheet Ex. M-A was served upon him but despite of the same he did not submit his reply and as such his services had to be terminated. I have gone through the record and,— *vide* that chargesheet Ex. M-A was duly served upon him. It is being admitted even by Ram Chander also. He has however taken the plea that he had submitted the reply thereof but in support of the same he has not led any evidence. His long absence from duty is a strong circumstance against him. According to report he had started remaining absent from duty w.e.f. 24th July, 1980 and he had not turned up despite of reminders and in this manner there has been long absence of about 2½ years and there was hardly any occasion for the respondent to wait for him any longer. It appears that he had adopted this path of absence deliberately to achieve his bad purpose. Allegations are that he had mis-appropriated the amount of Rs. 84,534.99 and further had destroyed the record also. It is the situation then he hardly deserves any leniency or sympathy. In my opinion in the given circumstances of the case there was no way out for the respondent except to terminate his services. It hardly requires any interference. The reference is hereby answered against Shri Ram Chander, workman and in favour of respondent.

Dated the 19th May, 1987.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad

Endst. No. 1020, dated 26th May, 1987

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh as required under section 15 of I.D. Act.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad

The 7th July, 1987

No. 9/3/87-6Lab./3967.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. The Mahendergarh Central Cooperative Bank Ltd., Mahendergarh.

IN THE COURT OF SHRI A. S. CHALIA, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference No. 222 of 1982

between

SHRI SUBHASH CHANDER, WORKMAN AND THE RESPONDENT-MANAGEMENT OF M/S
THE MAHENDERGARH CENTRAL COOPERATIVE BANK LTD., MAHENDERGARH.

Present :

Shri S. K. Goswami for the workman

Shri M. P. Gupta for the respondent-management

AWARD

This reference under section 10(1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—*vide* its endorsement No. ID/FD/GGN/78/82/38904, dated 20th August, 1982 to adjudicate upon the dispute of service matter covered by Second Schedule under section 7 of the said Act, arisen between Shri Subhash Chander, workman and the respondent management of M/s. The Mahendergarh Central Cooperative Bank Ltd., Mahendergarh. Accordingly it has been registered as Reference No. 222 of 1982.

2. Subhash Chander was appointed on *ad hoc* basis as Secretary in Primary Cooperative Credit and Service Society,—*vide* letter Ex. M-6 dated 25th August, 1977/5th September, 1977. His services were governed under Haryana State Central Cooperative Bank's Staff Service (Common) Cadre Rules, 1975 and he had joined on 13th September, 1977,—*vide* Ex. M-9. On 27th March, 1978 there was a meeting of Administrative Committee of respondent's Bank and it was resolved that work of Subhash Chander and several others was satisfactory and as such they were appointed on probation for a period of two years. It appears that a MLA had tabled question No. 86 dated 2nd March, 1979 in the Haryana Assembly about the appointment of Banks employees without adopting mode of recruitment as required under the said Rules and there was a meeting of Board of Administrator on 21st March, 1979. It was resolved,—*vide* Ex. M-8 that services of Subhash Chander and six others be terminated and one month's pay be paid to them as no longer required and accordingly termination order Ex. M-1 was issued on 30th March, 1979. Feeling aggrieved of the same, he had filed a appeal against that order to the Registrar, Cooperative Society, Haryana and operation of order dated 30th July, 1979 was suspended,—*vide* Ex. M-2 dated 13th April, 1979. However that appeal was withdrawn on 27th December, 1979 and accordingly dismissed,—*vide* Ex. M-3, dated 1st June, 1980. In consequence termination was approved,—*vide* Ex. M-4.

3. It was alleged by Subhash Chander that his services were terminated illegally and wrongly, malafidely victimisingly and in violation of principles of natural justice and accordingly request was made to reinstate him into his job.

4. On notice respondent contested the said reference. Objection has been raised that Subhash Chander is estopped to challenge the order of termination by way of his act and conduct. Its contention is that he had filed appeal against the order of termination and later on had withdrawn the same and as such there is estoppel against him. The order of termination is being justified on the ground that it was passed within the period of probation and he had no status of a regular employee. The contention is that in the first instance he was appointed for two years and then it was extended for one year also and his services were terminated as no longer required and that order was sent to him along with one month's salary but the same were received back un-delivered. It has been conceded that 4 co-employees had continued in service by the order of Civil Court and services have since been regularised. It is alleged that this Subhash Chander had mis-appropriated the amount of Rs. 12,321.72 P. and he had deposited the amount of Rs. 11,821.78 P. and as such his work was not satisfactory and he had to be placed under suspension on 23rd November, 1979 and services were terminated.

5. By way of replication, the workman had repeated his claim as well as allegations also. On the pleadings of the parties Shri H.S. Kaushik, the then learned Presiding Officer of the Labour Court had framed the following material issue on 20th December, 1982 :—

(i) As per reference ?

6. In support of the pleas, there is statement of Jai Pal Yadav, Managing Director of the Bank. On the other hand, Subhash Chander had also appeared in support of his case. Clerk of the respondent has also been examined by the workman. I have heard the parties as represented above. My findings on the said issue is as follows.

7. Issue No. 1.—In between the parties there is no dispute that Subash Chander had joined on 13th September, 1977 as Manager Mini Bank and was relieved on 27th February, 1980 and during that period he had worked without any break. Obviously this period is of more than 240 days and he is entitled to be termed as having been continuous service of the respondent as defined under section 25-B of the said Act. The plea of the respondent is that he was appointed on probation for 2 years on 27th May, 1978, *vide* Ex. M-7 and this period was extended for one year more and before the expiry thereof his services were terminated as no longer required. This procedure adopted by the Bank is not appreciable. He was appointed,—*vide* appointment letter Ex. M-6 on *ad hoc* basis and then and there he should have been placed under probation if required. There was hardly any necessity to appoint him on probation,—*vide* Ex. M-7. The idea behind the order of termination on the face of it is that some MLA had tabled Assembly question about the said appointments and to have a favourable reply, order of termination had to be passed. It is now admitted case of the respondent that four out of seven managers are still in service and for that reason advanced is that they had obtained stay order from the Civil Court. However on the file there is no order of Civil Court. In this manner, the order of termination on the face of it becomes a colourful one. Respondent is not supposed to pick and choose and throughout some one and retain others. This approach is against the principles of natural justice. I have gone through the statement of respondent Managing Director but I do not find any force therein. On the other hand Subhash Chander has relied upon the statement of Bank's Clerk, who has stated that co-workers have been retained in service while he has been victimised in the matter. Admittedly no retrenchment compensation was offered to him and on the face of it order of termination is a bad one since it is against the requirement of Section 25-F of the said Act. I hereby quash the order of termination and reinstate him into his job with full back wages and further with continuity of service. It is hoped that respondent Bank would implement the

award without any loss of time and pay the amount of arrears to him. It would not be a gift for him but his wages simply to meet immediate needs.

Dated, the 27th May, 1987.

A. S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

Endstt. No. 1071, dated 3rd June, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under Section 15 of I.D. Act.

A. S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

No. 9/3/87-Lab./3968.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Sirocco Auto Private Ltd., Plot No. 69, Sector 6, Faridabad.

IN THE COURT OF SHRI A.S. CHALIA, PRESIDING OFFICER,
LABOUR COURT, FARIDABAD.

Reference No. 230 of 1985

between

SHRI SHIV KUMAR, WORKMAN C/O SHRI CHAMAN LAL OBERAI, 1A-119, NIT,
FARIDABAD AND THE RESPONDENT-MANAGEMENT OF M/S SIROCCO
AUTO PRIVATE LTD., PLOT NO. 69, SECTOR 6, FARIDABAD.

Present:—

Shri C.L. Oberai for the workman.
None for the respondent-management.

AWARD

This reference under Section 10 (1) (c) of Industrial Disputes Act, 1947 (Act No. 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Shiv Kumar, workman and the respondent-management of M/s. Sirocco Auto Private Ltd., Plot No. 69, Sector 6, Faridabad, Accordingly it has been registered as Reference No. 230 of 1985.

2. Shri Shiv Kumar had been in the service of the respondent as an Electrician and he had experience of nine years at his credit. He was drawing Rs 475 per month. The trouble had started when he was chargesheeted,—vide Ex M-2, dated 16th June, 1984 and Ex. M-3, dated 3th July, 1984. His explanations were not found satisfactory and,—vide order Ex.M-1, dated 16th July, 1984 Shri Satish Ahuja was appointed as an Enquiry Officer against him. He was directed to appear before the said Enquiry Officer on 20th September, 1984 and on that day he was proceeded *ex parte* and enquiry report Ex.M-6, dated 19th September, 1984 was submitted against him, and on that basis he was dismissed from service,—vide Ex.M-10, dated 1st December, 1984. Feeling aggrieved of the same he had served demand notice, dated 3rd December, 1984, upon the respondent. He further submitted his claim Statement also alleging that he has been victimised due to his union activities and partial enquiry report has been procured against him which is bad on facts as well as law also.

3. On notice respondent filed written statement contending to the effect that he was served with chargesheet and fair and proper enquiry was held against him and after considering the same order of dismissal has been passed. By my order of rejoinder Shri Shiv Kumar repeats his claim as well as allegations also.

4. on the pleadings of the parties, my learned predecessor had framed the following material issue on 15th April, 1985 :—

(i) Whether termination of Shiv Kumar is justified and proper. If not, to what relief he is entitled

5. From the side of respondent Shri Satish Ahuja, Advocate has been examined as Enquiry Officer, on the other hand there are statements of Shiv Kumar, workman, Ganesh Kumar and Suresh Kumar also.

6. My learned predecessor Shri R.N. Singal held on 18th October, 1985 to the effect that fair and proper enquiry has not held against him and as such he has quashed enquiry report, dated 19th October, 1984. Respondent-management was directed to lead its entire evidence on 12th December, 1985 and on that day it had to be proceeded *ex parte* since nobody had turned up. Though on 7th February, 1986 an application was made by the respondent for setting aside that *ex parte* order and so was done on 18 February, 1986 and then the case was adjourned to 25th April, 1986 for the evidence of respondent and then on that day adjournment was requested which was allowed and case was adjourned to 24th June, 1986, in the meanwhile Shri Singal was transferred from Labour Court to Ambala as learned Additional District and Sessions Judge and from him had taken over on 10th June, 1986 and on that very day this file was taken up and re-fixed for 19th August, 1986 since I had to proceed on summer vacation. That date was noted on behalf of the respondent. On that fixed date Representative of the management has refused to appear and case was proceeded further. I have heard Shri Chaman Lal Oberai Rep. of Shiv Kumar. From the side of the respondent none has turned up. The matter now is quite easy for Shiv Kumar to succeed. Enquiry Report Ex.M-6, date 19th October, 1984 has been set aside by my learned predecessor,—*vide* his order, dated 18th October, 1985. The respondent was directed to lead its entire evidence to prove the said charges but it has failed miserably to do so. As a matter of fact respondent has not turned up to prove the said charges. On the other hand we have statements of workman and other two persons also. In the case there is no evidence to prove the charges then there is hardly any necessity to insist for any evidence in rebuttal. In consequence dismissal order Ex.M-10, dated 1st December, 1984 is hereby quashed. Shiv Kumar is reinstated into his job with continuity of service and further with full back wages Rs. 475/-per month and further in revised scale, if any. The reference is accordingly answered in favour of Shiv Kumar and against the respondent. Dated, the 28th May, 1987.

A. S. CHALIA,
Presiding Officer, Labour Court,
Faridabad.

Endst. No. 1072, dated the 3rd June, 1987.

Forwarded (four copies) to the Commissioner and Secretary to Govt. Haryana, Labour and Employment Deptt., Chandigarh as required under Section 15 of I.D. Act.

A. S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

The 8th July, 1987

No. 9/1/87-Lab./4835.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the Management of M/s (i) Deputy Commissioner, Kurukshetra, (ii) Administrator, Municipal Committee, Cheeka, tehsil Guhla, district Kurukshetra:—

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Ref. No. 4 of 1987

SHRI VED PARKASH C/O SHRI KARAN SINGH, SECRETARY, BHARATYA MAZDOOR SANGH, G. T. ROAD, PANIPAT AND THE MANAGEMENT OF DEPUTY COMMISSIONER, KURUKSHETRA (II) ADMINISTRATOR, MUNICIPAL COMMITTEE, CHEEKA, TEH. GUHLA, DISTT. KURUKSHETRA

Present :—

Shri Karan Singh for workman.
None for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—*vide* clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947 referred dispute between Shri Ved Parkash and Deputy Commissioner, Kurukshetra etc. to this Court. The terms of the reference are as under :—

“Whether termination of services of Shri Ved Parkash is justified and correct, if not, to what relief is he entitled?”

Workman through his statement of claim alleged that he joined service of respondent-management on 2nd April, 1985. His candidature was sponsored by Employment Exchange. He was given extension from time to time, ultimately on 7th June, 1986 respondents terminated his services without assigning any reason whatsoever. He had completed service of more than 240 days, so before terminating his services no notice; no pay, in lieu of notice period and retrenchment compensation was paid to him. So his termination is violative to provisions of section 25 (F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondents were served for 23rd March, 1987. Shri Sucha Singh, Secretary of Respondent No. 2 appeared. Claim statement filed by the workman, copy of the same was supplied to Shri Sucha Singh. The reference was fixed for filing written statement for 10th April, 1987. But on that day none of the respondents appeared, so respondents were proceeded *ex parte*. The reference was fixed for *ex parte* evidence for 30th April, 1987.

In support of *ex parte* evidence workman examined himself as AW-1 and made deposition on oath that he was appointed as a Clerk on 2nd April, 1985 by the respondent up to 7th October, 1985. Thereafter extension from 8th October, 1985 to 7th April, 1986 was granted and thereafter workman had been working up to 7th June, 1986 but respondent No. 1 did not agree extension to workman inspite of recommendation made by respondent No. 2. Respondent No. 2 clearly wrote to respondent No. 1 that work and conduct of the workman is very good, he should be granted extension but respondent No. 1 refused extension the reason best known to him and ultimately services of Shri Ved Parkash, workman were terminated on 7th June, 1986. Workman also stated that he had completed service of 240 days before terminating his services, no notice, no wages, in lieu of, notice period and no retrenchment compensation was paid to him. He further deposed that certain junior person, namely, Shri Jagdish Singh Rana, Om Parkash, etc. have been recruited by the respondent-management.

I have heard Shri Karan Singh, Authorised Representative of the workman as well as have perused the *ex parte* evidence and reproduced above and of the considered opinion that both the respondents were served through the process of this Court. Respondent No. 1, authorised Respondent No. 2 to appear in the court and contest the case. Secretary of respondent No. 1 appeared on the first date of hearing and thereafter he absented reasons best known to it. From appointment letter and joining report it is evident that workman joined service of respondent-management on 8th April, 1985 in compliance with the appointment letter, dated 2nd April, 1985. From 8th April, 1985 upto 7th April, 1986 workman was retained in service thereafter; respondent No. 2 made a request to respondent No. 1 that work and conduct of the workman is good, extension should be given to him and this extension was refused and respondent No. 2,—*vide* order, dated 7th June, 1986 intimated the workman that his services have been dispensed with because Deputy Commissioner, Kurukshetra has refused extension,—*vide* its letter No. 1336 L.F.A., dated 5th June, 1986.

In view of the above circumstances, workman was paid only up to 7th April, 1986 as stated by him while he remained in the job of respondents upto 7th June, 1986. From 8th April, 1985 upto 7th June, 1986 workman had completed service of more than 240 days in the employment of respondents, so while terminating his services one month notice or wages in lieu of notice period and retrenchment compensation should have been paid to him but the respondents did not comply with these fundamental principles of Industrial Disputes Act. Moreover, respondents have recruited two junior persons Jagdish Singh Rana, Om Parkash after dispensing with the services of the workman as per recommendation made by respondent No. 2 to respondent No. 1 for the extension of the workman that work and conduct of the workman Shri Ved Parkash is good it shows that services of the workman were dispensed with without any stigma and fresh persons were taken in service ignoring the workman who had got preferential right of employment, so there is a violation of provisions of section 25(F) of Industrial Disputes Act, 1947, so this termination of workman by the respondents is unjust and illegal, so order of termination is declared null & void. So I pass an order of reinstatement of the workman with continuity in service and with full back wages and I pass an *ex parte* award accordingly regarding the dispute in hand between the parties.

Dated the 1st May, 1987.

V.P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.

Endst. No. 988, dated 2nd May, 1987.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour & Employment Depts., Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,

Presiding Officer,
Labour Court, Ambala.